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IN THE
Supreme Court of the United States

OCTOBER TERM, 1945

—
No. 954
—

JOSEPH MERANDO, trading as MERANDO COMPANY
Petitioner

v.

JOSEPH MATHY and JOHN MATHY, Co-partners, trading as
MATHY COMPANY
Respondents

—
**BRIEF OF RESPONDENTS IN OPPOSITION TO
ALLOWANCE OF PETITION FOR WRIT OF
CERTIORARI**
—

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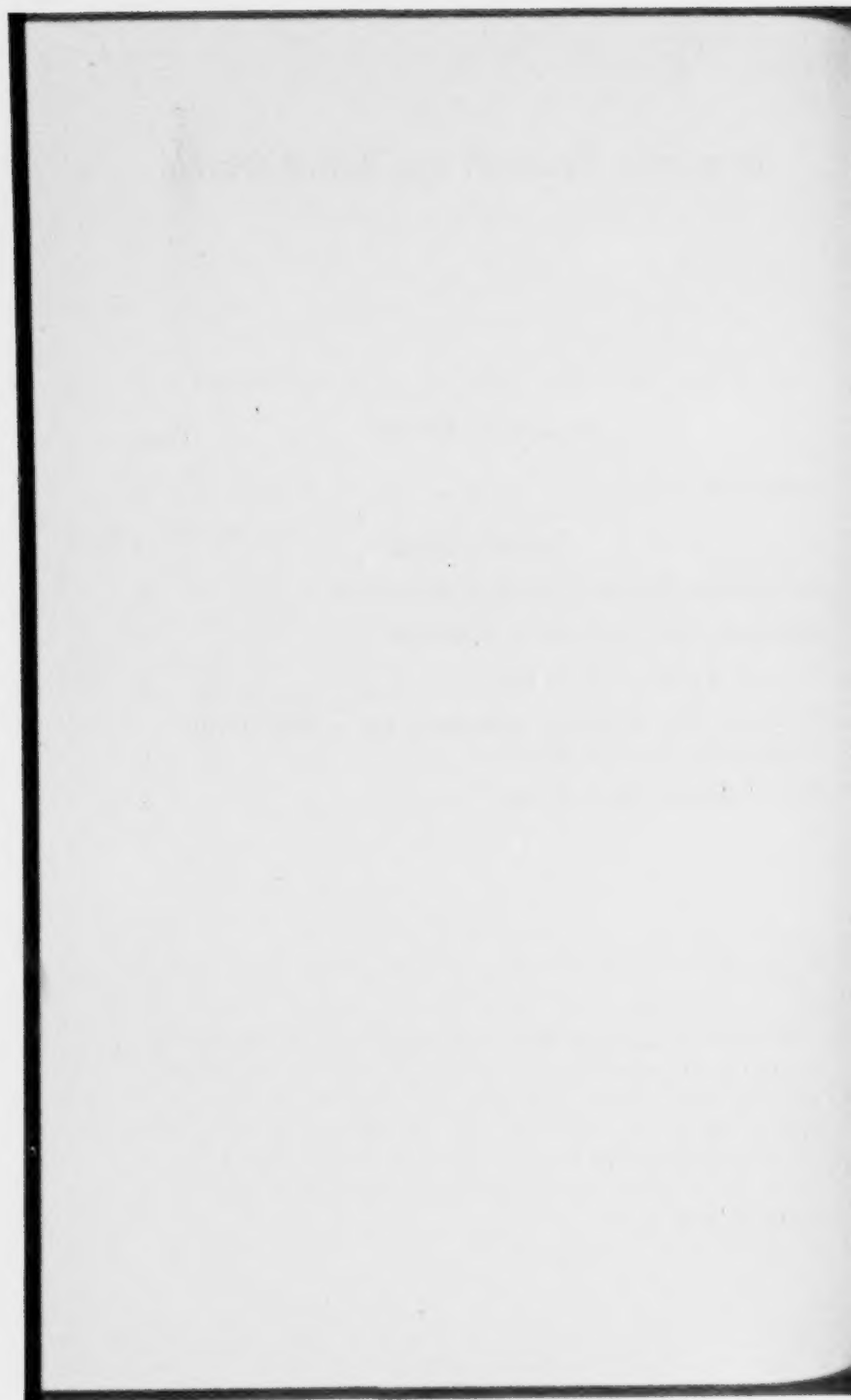
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ARGUMENT

The petition should be dismissed for the following reasons:

I

There are no questions presented (a) of general importance or (b) relating to the construction or application of the Constitution, or a treaty or statute, of the United States which have not been, but should be, settled by this court, or (c) which indicate the lower court has failed to give proper effect to an applicable decision of this court. Rule 38-5(c).

II

The errors urged are solely ones of fact and have been decided against the petitioner by the concurrent findings of the two lower courts; and, where clear error has not been shown, which counsel submits is the situation here, this court has repeatedly held it will not review the evidence. *Baumgartner v. U. S.*, 322 U. S. 665-670; *Anderson v. Kirkpatrick*, 321 U. S. 349-356; *Goodyear Tire & Rubber Company, Inc. v. Ray-O-Vac Company*, 321 U. S. 275-278.

III

The judgment entered is in accordance with settled law for, where one party has breached a contract, the other is entitled to recover, first, his actual expenditures under the contract, and, secondly, his anticipated profits. *U. S. v. Behan*, 106 U. S. 338. The petitioner does not now, nor has he at any time heretofore, questioned this rule of law, but what he seeks of this court is a different determination of the facts so that recovery can be had by him under his counter-claim for damages alleged to have been sustained in completing his contract with the United States.

IV

Further, the decisions of this court sustaining validity of forfeiture provisions of the nature found in the contract have not been ignored for all of them limit its application to situations where the party taking advantage of the right reserved has acted in good faith. See *Golta v. Weeks*, 271 U. S. 536, where it was said:

“The cases leave no doubt that such a provision for termination of a contract is valid, unless there is an absence of good faith in the exercise of the judgment.”

And, if the petitioner here was the cause of the breach of the contract, he was not in a position to exercise an honest judgment when he attempted, after the breach, to take advantage of the forfeiture provision and relieve himself

from liability. For the lower courts to have held otherwise would have been to have permitted the petitioner to take advantage of his own wrong.

Respectfully submitted:

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